

Complaint by Ms A and Mr B about Dispatches: Torn Apart

Type of case	Fairness and Privacy
Outcome	Not Upheld
Service	Channel 4
Date & time	20 July 2021, 22:00
Category	Fairness and Privacy
Summary	We have not upheld a complaint about unjust or unfair treatment and unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.

Case summary

The programme reported on an investigation into alleged failings in the Family Court, and about the “chaos and unfairness in the system”. The programme included interviews with Ms A and her son, Mr B, under aliases about their experience of the Family Court and “parental alienation”¹. The programme also included an audio recording of Mr B as a child being forcibly removed from his mother’s care to live with his father.

Ms A and Mr B complained² that they were treated unjustly or unfairly in the programme as broadcast because they did not give their informed consent for their story and “highly sensitive audio footage” to be included in the programme. They said that their story was “misrepresented to serve a political narrative which was not reflective of their case”.

Ms A and Mr B also complained that their privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast because an

¹ The programme described “parental alienation” as being “...the psychological manipulation of children by one parent so that they become estranged from the other parent”.

² The complaint was made on behalf of Ms A and Mr B by their legal representative.

audio recording of Mr B as a child in a highly distressed state and details of their story was obtained and included in the programme without their informed consent.

Ofcom considered that there was no unfairness to the complainants in the programme as broadcast, and that, while Ms A and Mr B had a legitimate expectation of privacy in relation to the audio recording and information about them obtained and included in the programme, the programme makers had taken appropriate steps to obtain the complainants' informed consent to include this material in the programme.

Programme summary

On 20 July 2021, Channel 4 broadcast an edition of its investigative programme *Dispatches* entitled *Torn Apart* about alleged failings in the Family Court, and about the “chaos and unfairness in the system”.

The presenter explained: “We reveal how courts can order the police to forcibly remove children who are not in danger from loving homes”.

At the beginning of the programme, footage of an interview with an actor³ representing Mr B under the alias “Edward” was shown. He said: “You must be a total psychopath to think that removing a child in that state is for the good of the child”. A real audio recording of Mr B as a child being forcibly removed from his mother’s care was played. Mr B could be heard saying: “I’m going to kill myself”.

The presenter continued: “We explore what happens when parents are alleged to have turned their children against each other”. She said:

“I’m Louise Tickle and for the last five years I’ve been trying to reveal what is happening in some of our Family Courts where magistrates and judges have to make incredibly difficult decisions every day about what is best for children. These are not child protection cases involving abuse or neglect. They are private battles between parents. But some of these cases can end up with children being forcibly removed against their will in very distressing circumstances. The problem is that a 1960 law intended to protect children says that nothing that happens in a Family Court can ever be reported without the express permission of the judge. So, there is no public accountability, no way to publicise an issue when things go wrong. In this programme we will go as far as we legally dare to explore whether some of our courts are failing families”.

In particular, the programme looked into “parental alienation”. Footage of an interview with Family Lawyer, Ms Jenny Beck QC, was shown. She said:

“Parental alienation is the psychological manipulation of children by one parent, so that they become estranged from the other parent, and, it’s terrible when it does take place, and children can be psychologically

³ Ms A and Mr B were represented in the programme by actors. ✂ [REDACTED].

manipulated, and the difficulty with parental alienation, as an allegation, is it's being made more and more often, and what it actually does is polarise the parties much further, so that they become completely entrenched and one person wins the children and one person loses the children, so the stakes couldn't be higher".

The presenter said:

"Parental alienation can undoubtedly harm children, but how do courts assess these claims and are some interventions equally or perhaps even more damaging?"

The programme included the stories of several families and their experiences of the Family Court system, including that of the complainants, Ms A (alias "Alex") and her son Mr B (alias "Edward")⁴. The presenter introduced the segment featuring their story:

"I've heard of another family who want to talk to me. Edward is now 24 and was forcibly removed from his mother to live with his father three times in his early teens".

While the presenter was speaking, footage of "Edward" as an adult with his head down walking through a park was shown.

Footage of an interview with "Edward" as an adult was then shown, he said: *"I've been totally broken. I've been totally dehumanised by that event".*

The presenter said:

"The family recorded the enforced removal. It's never been heard before, but they want this to be played to show how removals like this can cause long term damage to children's mental health".

"Edward" as an adult said: *"I was 14. Out of nowhere the police knocked on the door".*

The audio recording of Mr B being forcibly removed from his mother's care was played. Muffled angry voices could be heard. The programme included intertwined footage of the interview with "Edward" as an adult, and the audio recording of him being forcibly removed as a child.

"Edward" as an adult said: *"I remember snippets of the police coming in".*

(On the audio recording) the police said: *"We're not here to have an argument with you".*

"Edward" as an adult said: *"I was in such a state. I tried to jump off a second story balcony".*

(On the audio recording) a woman said: *"This child's going to kill himself. What's wrong with you?"*

⁴ Ibid.

(On the audio recording) “Edward” as a child could be heard crying and distressed.

“Edward” as an adult said: “You must be a total psychopath to think that removing a child in that state is for the good of the child. If it has to be done, it has to be done, because the judge says so”.

“Edward” as an adult said: “That just shows everything that’s wrong with the system”.

The presenter said:

“Edward’s mum, Alex, has spent the last seven years wondering if she should tell her story”.

Footage of an interview with “Alex” was shown. She said: “I was warned that if I go public with what was going on, I would go to jail. I was gagged”.

Footage of “Edward” as an adult walking with his hands in his pockets and headphones on his head was shown.

The presenter said:

“Edward was separated from his mother for 16 months”.

“Edward” as an adult said:

“I suffered from depression and anxiety for years and years and years. It just all hit me like a ton of bricks, and I ended up in hospital. And, I’m not talking about, oh, I feel a bit sad sometimes. I mean I suffered from really, really bad crippling panics and insomnia and it’s affected my life even now, even though it’s years gone”.

While “Edward” as an adult was speaking, footage of him smoking and looking at his mobile phone was shown. Footage was then shown of him playing video games.

The presenter said:

“His mum went to court over 25 times, fighting to get Edward back home with her, where he wanted to be. Alex says those repeated trips to court were hugely traumatising”.

“Alex” said:

“I remember getting on the train, and I sat there, and I just absolutely sobbed, aloud, looking at the floor, in my suit, and, I remember the carriage being absolutely silent, and, there was one woman, and she put her hand on my knee, and she said: ‘Are you okay?’ We were all destroyed by it, and it is gone, and it can never be given back, ever. But, people need to be held accountable for this, not just for me, but for the thousands of others. I’m so fucking angry”.

“Edward” as an adult said:

“These courts are just destroying children’s lives, and not just destroying children's lives, but also the lives of caring parents. I don't understand how they can sleep at night”.

The programme continued without further reference to the complainants.

The presenter later concluded the programme and the programme showed various people giving their opinions on the Family Courts. Ms Claire Waxman, Victims’ Commissioner for London, said:

“The Family Courts need a major overhaul. That secrecy is actually enabling abusers, and so it's really important that we sort of lift the lid off the Family Courts and that we actually understand the court decisions that are made”.

The programme ended with the following caption on screen:

“We approached the Ministry of Justice about the issues raised in the film and they said: ‘Last year we announced an overhaul of how Family Courts deal with domestic abuse cases. These provide extra protections for victims and stronger powers to block abusers from repeatedly dragging them back to court. We are currently reviewing the presumption of parental involvement where there is a risk of harm to a child’”.

Summary of the complaint and broadcaster’s response

Complaint

Unjust or unfair treatment

- a) Ms A and Mr B’s complaint was submitted on their behalf by their legal representative. Ms A and Mr B complained that they were treated unjustly or unfairly in the programme as broadcast because:
- i) They did not give their informed consent for their story and “highly sensitive audio footage” to be included in the programme. Ms A and Mr B said that their consent was offered on a “false basis” and that they would not have consented to contribute to the programme, including providing the audio recording of Mr B, had they known it would be “misrepresented to serve a political narrative which was not reflective of their case”. Ms A and Mr B said that they had only consented to participate in the programme because they had wanted the seriousness of “parental alienation” and the harm that it could do to children to be recognised and understood and were assured that their story would be told in a way that was “accurate”. It was on this basis that they were willing to consent to release information to the programme makers, including the audio recording of Mr B in a “very distressing situation during his childhood”.

Ms A said that the ‘Consent Form’ signed by her stated: “The film will look at whether there needs to be greater transparency in the Family Court and examine the use of forced removal orders in the context of parental alienation allegations”. She said that: “At the time I did not take in fully what this meant, but with the benefit of hindsight I now realise it means that the film was examining the forced removal of children from resident mothers due to false parental

alienation allegations made against them by, usually abusive fathers. No one ever clarified this with me or told me that *Torn Apart* would be pushing such a narrative". In any event, the inclusion of this text in the Consent Form did not justify misrepresentation in the programme of the factual situation of Ms A and Mr B.

- ii) "...Their story and highly sensitive audio footage they contributed to the programme were misrepresented". Ms A and Mr B alleged that their story and the audio recording were presented in a way that gave viewers the misleading impression that "*Edward*", representing Mr B in the programme, when he was a child had been living with his mother, "*Alex*", representing Ms A in the programme. Ms A and Mr B alleged that this misrepresentation had the intention of "...furthering the programme's political narrative that 'non-resident' parents are using allegations of 'parental alienation' to cause Family Courts to forcibly remove children from resident parents and change the child's residence to the other parent". In the case of the complainants, the father was the resident parent who the complainants said used parental alienation to disrupt Mr B's relationship with his non-resident mother, Ms A.

Ms A said that, for example: "They [i.e. Channel 4] only use[d] the part of the audio where you can hear [Mr B] screaming that he is going to kill himself if he is brought back to his father. They did not include the fact that I was arrested in front of my son during the raid. They spliced the audio to give the impression that I was the resident parent and [Mr B] was yet another child being forcibly removed due to false claims of parental alienation made by the father".

Ms A also said that the programme introduced her and her son's story as follows:

"I've heard of another family who want to talk to me. Edward is now 24 and was forcibly removed from his mother to live with his father three times".

Ms A said that this "...further reinforced the impression that I was the resident parent accused of parental alienation and the father was attempting to gain more access through forced removals. The contrary was true; the ✂ [REDACTED]⁵ father in our case was the resident parent and was using forced removals as part of a pattern of parental alienation to disrupt [Mr B's] already limited relationship with me". Ms A said that: "As such, I believe they [i.e. Channel 4] exploited [Mr B's] suicide attempt and [the] extreme distress heard in the...raid audio as a commercial hook to support the narrative that had no relation to our situation".

Ms A also said that the excerpts of the interview between her and the reporter included in the programme suggested that she was crying on the train because of the multiple court proceedings she had had to attend. Ms A said that this was not the case, and that the programme had not included those parts of the interview where she explained that "...I was crying on the train after [Mr B] had been forcibly removed from...✂ [REDACTED]⁶...Again, by revealing the full details of this story it would have demonstrated that the father was the resident parent".

⁵ This text has been redacted for legal reasons.

⁶ This text has been redacted for legal reasons.

Ms A and Mr B alleged that the way that their story was misrepresented in the programme was not merely a misunderstanding but was either deliberate or at least ignored information available to the programme makers from which the true circumstances were apparent. The programme makers had been provided with material from which they were aware of the true facts of their case, including that [Mr B's] residence was with the father. Accordingly, the misrepresentation (whether express or implicit) that this was a case in which allegations of 'parental alienation' were being used by a father to have his child's residence transferred from the mother to the father was contrary to the true facts of the case which the programme makers knew (or at least should have known from the material provided to them). Further or alternatively, the misrepresentation occurred as a result of the programme makers' failure to exercise due care and to make reasonable enquiries to ensure they were not misrepresenting the complainants' situation.

Unwarranted infringement of privacy

- b) Ms A and Mr B complained that their privacy was unwarrantably infringed in connection with the obtaining of material included in the programme.

In summary, they alleged that material that was highly sensitive to them, namely, the audio recording of Mr B as a child in a highly distressed state, together with information about their case so that the context of the audio recording could be understood, was provided to the programme makers by, and with the consent of, the complainants on the basis that they: wanted the seriousness of "parental alienation" and the harm that it could do to children to be recognised and understood; and were assured that their story would be told in a way that was "accurate". Ms A and Mr B alleged that they now believed that their consent was obtained from them on a "false basis" and that they would not have consented to contribute to the programme, including providing the audio recording of Mr B had they known it would be "misrepresented to serve a political narrative which was not reflective of their case". They added that the circumstances "vitiating any possible 'informed consent'...which they provided when supplying the footage and associated contemporaneous documents and information to the programme-makers".

- c) Ms A and Mr B also complained that their privacy was unwarrantably infringed in the programme as broadcast.

In summary, they alleged that although they were anonymised in the programme, the audio recording related to both of them and was highly intimate and private to them in that it was in respect of an event that was central to their life stories. They contended that the audio recording broadcast in the programme had contained sounds of Mr B's "severe distress and mental health emergency, which was plainly information that was highly confidential to him". They added that all of the information about, or obtained from, them and subsequently used in the programme as broadcast "constituted unwarranted invasion of their privacy as it was information that they had contributed on the basis of consent that was either obtained from them on a misleading basis (such that the consent was not 'informed consent') or, if the programme-makers' intentions changed after 'informed consent' was provided, did not extend to the use of the material in the programme to promote a false narrative".

Broadcaster's response

Unjust or unfair treatment

- a) Channel 4 addressed the two fairness heads of complaint.
- i) Channel 4 denied that Ms A and Mr B did not give their informed consent for their story and footage to be included in the programme, or that such consent had been obtained on a “false basis”.

Channel 4 said that the programme's producer was first put in touch with Ms A as part of the programme makers' research into children who were forcibly removed from one parent to another. They were aware that this had happened to Mr B ten years previously. There was another family featured in the programme who had also been subjected to this practice and the producer spoke to Ms A and Mr B, without giving any detail about the other family, about the parallels between their two cases and how valuable it was to hear Mr B's perspective of this experience as an adult – as the children from the other family in the programme were still minors. Channel 4 said that both the complainants were motivated to help other people through sharing their experience.

Channel 4 said that the producer had sole contact with the family throughout the whole process. The producer spoke to Mr B initially in July 2020 and Ms A in November 2020, and it was during these preliminary conversations that it was made clear to the complainants that in order to preserve their anonymity, which both complainants were very concerned with, and to protect both Channel 4 and themselves from contempt proceedings⁷, the programme makers needed to be careful with how much of their story was revealed in the programme, including information which might lead to a 'jigsaw' identification⁸. Channel 4 said that at no stage were the complainants promised that their “whole story” would be included in the final programme, as this would not be normal practice due to the usual editing process and for the specific legal reasons relating to contempt (see footnote five). Channel 4 added that to do so would have impermissibly compromised its ability to retain independent editorial control.

Channel 4 said that in February 2021, Ms A and Mr B were separately interviewed by the producer and extracts from these were included in the programme⁹. Channel 4 said that during the interview with Ms A, there were various points at which she indicated her

⁷ The programme makers had to be particularly careful in making the programme due to the restrictions imposed by Section 12 of the Administration of Justice Act 1960, which forbids the publication of information relating to proceedings under the Children's Act 1989. This restriction remains in place even after proceedings have ended and when the child in question is an adult. If information were broadcast which breached this provision, then both the broadcaster and the contributor who revealed the information could be found in contempt of court.

⁸ Identification of individuals by piecing together reported information with other information available elsewhere for example in other interviews or news reports.

⁹ Transcripts of the interviews were provided to Ofcom.
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awareness of the edit process and that not everything would be used and specifically she stated the following regarding the evidence she had to support her story:

“So go to town, do your little bit of editing, you’ll probably only use a minute of me”.

Channel 4 said that this clearly demonstrated that Ms A appreciated that edits would be made as well as that only a limited amount of her story would be included.

Channel 4 also said that during Mr B’s interview, the producer said: “...You know, most of this, as you can imagine, is going to be edited out...”, to which Mr B responded: “Yeah”. The producer then said: “That’s the painful process of how we make films. So, it’s such a small proportion of what we actually film that ends up in the film” and Mr B responded: ✂ [REDACTED]¹⁰. Channel 4 said that this demonstrated that Mr B clearly understood the editing process.

Channel 4 said that on 1 June 2021, the producer called Ms A and took her through hers and Mr B’s segments in the programme verbatim and in the order included in the final programme. At this stage, consent forms had not been sent and on 4 June 2021, Ms A sent the producer a voice note via a messaging application chasing these forms and expressing frustration that there was not yet a transmission date for the broadcast of the programme. Ms A also referenced that the producer was “great” when she had given her a read through and voiced no concern about her and her son’s contribution¹¹.

Channel 4 said that release forms¹² for the interviews and the audio recording of the enforced removal of Mr B were provided to Ms A on 21 June 2021. Channel 4 said that Ms A was “actively involved” in the negotiation of these, to the extent that, unusually for a contributor, she redrafted the heads of agreement for both of these.

Channel 4 said that on 16 July 2021, the release forms were agreed and signed using the heads of agreements Ms A had provided and that on 20 July 2021, following the broadcast of the programme, Ms A sent a voice note to the producer expressing her appreciation for the programme:

“...that’s great. Saw it, we watched it. A little bit disappointed that it wasn’t clear that I was arrested that night ✂ [REDACTED]¹³. But, anyway apart from that, very very good. I’d love to see what [name] has to say tomorrow. I hope he’s going to come back for comment, I don’t know whether he actually saw the programme. But, anyway, well done, thanks very very much. You did a great job, had to get lots of information in there. The people coming on giving commentary were

¹⁰ This text has been redacted for legal reasons.

¹¹ A transcript of the voice note was provided to Ofcom.

¹² Copies were provided to Ofcom.

¹³ This text has been redacted for legal reasons.

great. It was great that she tried to get into that hearing which is very good. And, the barrister, human right attorney saying we can't get in there, you're not allowed any documents etc all very very good. Okay, I'm sure I'll catch up with you in the next couple of days, well done girl, and thank you very much".

Channel 4 said that it was unclear why Ms A had changed her position in the days following the broadcast of the programme. Channel 4 said that Ms A contacted the production team to express her concerns. The programme makers responded to her queries and offered to discuss them on a videocall, but this was declined. Following Ms A indicating that she was pursuing a complaint with Ofcom, it was decided that it would be inappropriate for the programme makers to continue to communicate directly with her.

Channel 4 said it was denied that the audio recording was "misrepresented to serve a political narrative". Channel 4 said that the programme makers' aim in making the programme was to expose practices within the Family Court system, such as enforced removals of children, to the general public who were unlikely to be aware that this occurred as it was not widely reported. Channel 4 said that it was felt that that this was "...strongly in the public interest and Mr B's recording was an incredibly powerful demonstration of the distress removals can cause when they are ordered to take place".

Channel 4 said it was denied that the complainants were misled by the consent form, particularly given, it said that Ms A had been spoken through the complainants' full contribution prior to signing it, so was "fully aware" of what was included in the programme with regard to their story. The consent form explicitly stated that the programme would "...examine the use of forced removals in the context of parental alienation allegations". Channel 4 said that the complainants' case was complex, and the programme makers were unable to include all the detail of their parental alienation allegations, particularly in view of the risk of revealing their identity by jigsaw identification or of contempt of court in doing so.

Channel 4 said that it was denied that the programme was pushing the narrative of false parental alienation allegations being made against resident mothers, by usually abusive fathers. While the other enforced removal footage featured in the programme did make allegations of this being a cause of their dispute, Channel 4 said that the programme makers were "extremely careful" not to conflate the two stories and they were clearly separated. Channel 4 said that the contribution from Ms A and Mr B came after a section of the programme focusing on the programme makers' survey results on the mental impact of Family Court proceedings on children and was deliberately included after this to demonstrate the emotional impact of enforced removals ordered by the courts. Channel 4 said that this was an "entirely legitimate exercise of editorial discretion".

- ii) In relation to the complaint that the complainants' contributions (including the audio recording) had been misrepresented, Channel 4 provided responses to the following points (shown in bold below) which it identified as the main elements of the complaint:

“The story and audio gave the misleading impression the child (Mr B) was living with his mother (Ms A), which was included intentionally to further a political narrative that ‘non-resident’ parents use parental alienation allegations to cause Family Courts to forcibly remove children from resident parents to the other parent”.

Channel 4 said that the following references were made to the complainants in the programme:

- When setting up their story the programme stated: *“...Edward is now 24 – and was forcibly removed from his mother to live with his father three times in his early teens”.*
- After the extract of the recording of Mr B being forcibly removed was played, the programme stated: *“Edward was separated from his mother for 16 months”.*
- After Mr B describes the mental impact of the enforced removal, the programme stated: *“His mum went to court over 25 times fighting to get Edward back home with her – where he wanted to be”.*

Channel 4 said that all of the above statements were factually correct and there was no reference made to who the resident parent was, or which parent was accused of parental alienation. Channel 4 said that, in those circumstances, it did not accept that any of the statements would have led viewers to conclude that Ms A was the resident parent at that stage. Channel 4 said that, in fact, it considered that viewers were likely to have inferred the opposite – that the father was the resident parent, which was the case.

“The programme only uses the part of the audio where you hear Mr B screaming that he is going to kill himself if he is brought back to his father. It does not include the fact that Ms A was arrested”.

Channel 4 said that a “legitimate editorial decision” was made that it was unnecessary to include this information. Channel 4 said that the programme’s focus in this section was on the mental impact on the child and going into the complex details of Ms A’s arrest would not only have deviated from this, but might also have led to her being identified. Channel 4 said that Ms A clearly understood this, as in her statement to Ofcom, in relation to being approached for the programme, she stated: *“...they [the programme makers] were particularly interested in speaking with [Mr B] about his feelings and experiences throughout the ordeal as they want to concentrate on the child’s view of things”.* The broadcaster said that choosing not to include Ms A’s arrest was a legitimate editorial decision which did not result in the complainants’ contributions being taken out of context or misleading viewers, nor did it amount to unjust or unfair treatment in the programme.

“The audio was spliced to give the impression Ms A was the resident parent and Mr B was another child being forcibly removed due to false claims of parental alienation”.

Channel 4 said that it was unclear which sections of the programme the complainants were referring to. Channel 4 said that careful and legitimate editorial decisions were made as to which sections of the complainants’ contributions and the audio recording to include in the

programme, and that these were included fairly and accurately and were not taken out of context. Specifically, Channel 4 said that the content included in the programme did not give the impression that Ms A was the resident parent and that Mr B was another child forcibly removed due to the false claims of parental alienation.

“[Ms A and Mr B’s] story [was presented] in such a way that further reinforced the impression [that] Ms A was the resident parent accused of parental alienation and the father was attempting to gain more access through forced removals”.

Channel 4 said that the wording used by the presenter when introducing the complainants to the viewers was accurate: Mr B “...was forcibly removed from his mother to live with his father three times in his early teens”. Channel 4 said that the programme did not go into any further detail about the custody arrangements, and it did not accept that viewers would have assumed, from this sentence, that Ms A was the resident parent, accused of parental alienation.

“Mr B’s suicide attempt and the audio of his distress was exploited as a commercial hook to support a narrative unreflective of the complainants’ situation”.

Channel 4 said that the audio recording had not been exploited, commercially or otherwise, to support a false narrative. Channel 4 said that the audio recording had been legitimately used to demonstrate the very real emotional impact an enforced removal, from one parent to another, can have on a child. It was not editorially necessary to include the specific details of residency or allegations of parental alienation, in order to do this.

“The audio of Ms A crying on the train suggests...[she was crying] because of the multiple court proceedings she had to attend. Ms A states this was not the case and the programme had not included the audio ‘...I was crying on the train after [Mr B] had been forcibly removed...& [REDACTED]’¹⁴, if it had, it would have demonstrated that the father was the resident parent”.

Channel 4 said that the segment of the interview with Ms A where she recalled crying on the train was not misrepresented. Channel 4 said that the segment of the interview with Ms A included in the programme (indicated in bold below) was taken from a section of the transcript of the full interview with her on 28 February 2021 in which she had described her response to a court hearing:

“The judge then rules that my son was entitled to stay on his wishes, as he was deemed to be mature enough to make the decision that he wanted to stay in the United Kingdom. I remember leaving the court absolutely distraught...”

¹⁴ This text has been redacted for legal reasons.

This drives you to become a person that you're not, it drives you to the depths of, of its horror. When your child is taken from you...I mean they didn't find me an unfit parent, in fact she ruled that contact should [be] generous and decisions should be made by both parents, but I'd already left the court by then. And, but within days the father had already taken his own measures to alienate the child, contact had completely broken down. **I remember getting on the train** at ✂ [REDACTED], because I'd left my child abroad - **in my suit and I sat down**, it was rush hour, it was the end of the court day on a British Rail train, on one of those carriages with all those commuters, driving out to you know, to the sort of wealthy belt of ✂ [REDACTED]¹⁵. **And I sat there, and I just absolutely sobbed aloud, looking at the floor in my suit** and my hair and my lipstick **and I remember the carriage being absolutely silent – and there was one woman and she put her hand on my knee and she passed me a paper napkin and she said, are you okay?** And I just couldn't talk, and I remember all the way from ✂ [REDACTED]¹⁶ this carriage being silent and sobbing, it was just surreal".

Channel 4 said that the section of the transcript in which Ms A referred to ✂ [REDACTED]¹⁷ was much later in the interview, long after she described the events on the train.

Channel 4 said that the section of the interview with Ms A included in the programme was fairly and accurately included with the intention of showing the traumatic impact the court proceedings had had on Ms A and a legitimate and reasonable editorial decision was made that a reference, as to who was the resident parent was not needed in order to demonstrate this.

"The way in which the [Ms A and Mr B's] story was misrepresented was not merely a misunderstanding, but was either deliberate or as a result of the programme makers failure to exercise due care".

Channel 4 said that there was no attempt to misrepresent the complainants' story and the programme makers took due care in its inclusion. Channel 4 said that for legal and editorial reasons, the programme makers could not include every detail of the complainants' situation, but this did not amount to a misrepresentation. Channel 4 said that the programme makers made the legitimate editorial decision to focus on the forced removal of Mr B. It said that the inclusion of this audio was properly contextualised and fairly and accurately evidenced by Mr B's "extreme distress" at being at the centre of the forced removal.

Unwarranted infringement of privacy

In response to the privacy heads of complaint, Channel 4 said:

¹⁵ This text has been redacted for legal reasons.

¹⁶ This text has been redacted for legal reasons.

¹⁷ This text has been redacted for legal reasons.

“It should be emphasised from the outset that Ms A and Mr B have complained about a programme in which neither were identified by name; in vision; or by any other surrounding details. This was done deliberately and carefully, to respect their requests for anonymity, therefore the extent to which their privacy could possibly be infringed is already fundamentally limited”.

- b) Channel 4 said that it was denied that the complainants’ privacy was unwarrantably infringed in connection with the obtaining of material included in the programme. It referred to its description of the “clear consent process” which it said had been followed. Channel 4 said that after the programme was broadcast, the programme makers also received confirmation of Ms A’s “overall satisfaction” with the programme. Channel 4 said that the complainants’ inclusion was accurate and did not misrepresent their contribution. It said that there was no “political narrative” employed by the programme makers and the contribution was used in the manner discussed with Ms A on 1 June 2021.
- c) Channel 4 said that it was also denied that the complainants’ privacy was unwarrantably infringed in the programme as broadcast. It said the consent the programme makers received from the complainants was fully informed and that they were provided with full details of their contribution. Channel 4 said that the complainants’ contribution, as broadcast, was the same as when Ms A had been taken through it by the producer, and neither the programme makers’ intentions, nor the focus of the programme changed after informed consent was obtained. Channel 4 said that the purpose of including the material in the programme was to show the distress which enforced removals can cause, and that this was accurately demonstrated in this sequence, it was not taken out of context, and it was not used to promote a “false narrative”.

Ofcom’s Preliminary View

Ofcom prepared a Preliminary View that Ms A and Mr B’s complaint should be not upheld. Both parties were given the opportunity to make representations on the Preliminary View, which, insofar as they are relevant to the complaint entertained and considered by Ofcom, are summarised below.

Complainants’ representations

The complainants did not make any representations on Ofcom’s Preliminary View.

Broadcaster’s representations

Channel 4 asked for the correction of a minor factual error but did not otherwise comment on the substance of Ofcom’s Preliminary View.

Decision

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be

transparent, accountable, proportionate, and consistent and targeted only at cases in which action is needed.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included: a recording of the programme, both parties' written submissions, transcripts of the interviews between the programme maker and the complainants, copies of correspondence between the complainants and the programme makers; and copies of the release forms.

Unjust or unfair treatment

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of [Ofcom's Broadcasting Code](#) ("the Code"). In addition to this Rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

- a) Ofcom considered the complaint that Ms A and Mr B were treated unjustly or unfairly in the programme as broadcast because they did not give their informed consent for their story and "highly sensitive audio footage" to be included in the programme. The complainants said that their story and "highly sensitive audio footage" were misrepresented.

Informed consent

- i) Ofcom began by considering whether the programme makers were fair in their dealings with Ms A and Mr B as potential contributors to the programme and, in particular, whether the complainants gave informed consent to participate in the programme. In doing so, we had particular regard to the following Code practices:

Practice 7.2 states:

"Broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise".

Practice 7.3 states:

"Where a person is invited to make a contribution to a programme...they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute...;
- be told what kind of contribution they are expected to make...;

- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness;
- be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and,
- be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Taking these measures is likely to result in the consent that is given being ‘informed consent’...”.

We first considered the information that was made available to Ms A and Mr B by the programme makers with regards to the nature and likely content of the programme, and Ms A and Mr B’s likely contribution, in advance of them agreeing to participate. In doing so, we took account of both parties’ submissions (set out in detail in the “Summary of the complaint and broadcaster’s response” section above). We also considered whether there were any significant changes to the nature and content of the programme prior to broadcast which may have altered Ms A and Mr B’s willingness to be involved and may have invalidated the consent they had given earlier in the programme making process.

From the complaint, Ofcom understood that Ms A and Mr B believed that their story and “highly sensitive audio footage” was “misrepresented to serve a political narrative which was not reflective of their case”. They said that had they known that the programme would focus on the forced removal of children from resident mothers due to false parental alienation allegations made against them by, usually abusive fathers, they would not have consented to take part in the programme. Ms A and Mr B said that they had only consented to participate in the programme because they had wanted the seriousness of parental alienation and the harm that it could do to children to be recognised and understood and were assured that their story would be told in a way that was “accurate”. The complainants said that in their case, Ms A was not the resident parent, and it was Mr B’s father, the resident parent, who made allegations of parental alienation to disrupt Mr B’s relationship with his non-resident mother.

Channel 4 provided a detailed account of the communications it had had with Ms A and Mr B about their contribution to the programme, as summarised above, and provided copies of the interview transcripts, voice notes and written exchanges to Ofcom. In particular, we took into account that prior to broadcast on 20 July 2021:

- Channel 4 said that when the producer had initially spoken with Ms A and Mr B, they had been motivated to help other people through sharing their experience in the programme;

- in preliminary conversations with the complainants, it was made clear to them that in order to preserve their anonymity, which the complainants were concerned with, and to protect Channel 4 and them from contempt of court proceedings, the programme makers had to be careful with how much of their story was revealed in the programme, including information which might lead to jigsaw identification;
- Channel 4 said that at no stage were the complainants promised that their “whole story” would be included in the final programme, as this would not be normal practice due to the usual editing process;
- in February 2021, Ms A and Mr B were separately interviewed by the producer and extracts of the interviews were included in the programme. During these interviews both complainants indicated that they were familiar with the editing process. For example, at one point Ms A said: “So go to town, do your little bit of editing, you’ll probably only use a minute of me”, demonstrating that she appreciated edits would be made and that only a limited amount of her story would be included in the programme. Likewise, during Mr B’s interview, when the producer said: “You know, most of this, as you can imagine, is going to be edited out...”, Mr B responded: “Yeah”. The producer continued and said: “That’s the painful process of how we make films. So, it’s such a small proportion of what we actually film that ends up in the film”. Mr B responded: ✂ [REDACTED]¹⁸, demonstrating that Mr B also understood the editing process;
- on 1 June 2021, the producer provided Ms A with a verbatim read-through of the segments of the programme featuring her and her son in the running order in which they would appear in the programme as broadcast. While Ms A expressed frustration at not receiving release forms or a transmission date from Channel 4 in a voice note that she sent three days later, she also stated that the producer was “great” and did not voice any concern about her contribution and that of her son as presented in the read-through;
- on 21 June 2021, release forms for the interviews and the footage of the enforced removal were provided to Ms A, and she was “actively involved” in the negotiation of these, to the extent that, unusual for a contributor, she redrafted the heads of agreement for both of these;
- on 16 July 2021, the complainants agreed and signed release forms (which Ms A had redrafted). These granted permission for Channel 4 to use the audio content of their respective interviews in the programme. Ms A also signed a separate release form, granting permission for Channel 4 to use the audio footage of Mr B’s forced removal. In each of the three forms, consent was given to use the material in the programme which was described as follows:

“Channel 4 Dispatches is investigating the workings of the Family Court especially in relation to cases of Domestic Abuse. The film will look at whether there needs to be greater transparency in the Family Court and

¹⁸ This text has been redacted for legal reasons.

examine the use of forced removal orders in the context of parental alienation allegations”.

- after the programme was broadcast on 20 July 2021, Ms A sent a voice note to the producer of the programme (see above) in which she was generally positive about the programme, albeit expressing her disappointment that details about her arrest were not included.

It is a matter for the programme makers and broadcaster to decide how best to ensure that they have obtained any necessary informed consent from contributors, and there are a number of potential ways in which this can be demonstrated. The existence of a signed release or consent form, for example, can provide useful evidence as to a contributor’s understanding of the nature and purpose of the programme and their contractual rights, as well as their willingness to participate in the programme on those bases. While it does not, in and of itself, mean that informed consent was given, obtaining a signed release or consent form may demonstrate that the broadcaster had a reasonable belief that informed consent had been obtained.

The complainants signed release forms for their interviews with the producers, consenting to their use in the programme. Ms A, also signed a release form consenting to the use within the programme of the audio recording of Mr B’s forced removal when he was a child. All of the release forms signed by the complainants describe the content of the Programme as “investigating the workings of the family court especially in relation to cases of Domestic Abuse” and considering “whether there needs to be greater transparency in the family court and examine the use of forced removal orders in the context of parental alienation allegations”. We considered that this was a fair description of the content of the programme overall. Although the programme included content about parental alienation allegations by non-resident fathers, leading to the forced removal of children from resident mothers, this was not the sole subject matter covered, with the programme examining more widely the role of the family court and how its interventions in parental disputes can impact the children affected.

We further compared the programme description provided in the release forms, and in particular what it said about the topics that would be explored in the programme, to the unedited transcripts of the interviews with Ms A and Mr B. In their interviews, we observed that Ms A and Mr B were asked about and spoke candidly of: Ms A’s divorce from Mr B’s father and the ensuing custody battle over Mr B; ~~3< [REDACTED]~~¹⁹; their experience of the Family Court and of “parental alienation” and of Mr B’s forced removal from the care of his mother; and, the child welfare system in the UK and the Children and Family Court Advisory Support Service (“Cafcass”). Ofcom considered that the issues discussed by Ms A and Mr B in their interviews with the programme makers were broadly in line with the programme makers’ description of the programme as set out in the release forms, as set out above.

In Ofcom’s view, given all of the circumstances above, it was reasonable for the broadcaster and programme makers to have understood that they had sought and obtained Ms A and Mr B’s informed consent to the inclusion of their content in the programme as broadcast.

¹⁹ This text has been redacted for legal reasons.

Ofcom also considered that there was nothing in the material provided to Ofcom by both parties to this complaint, such as the contributor release forms and correspondence between the parties, which suggested that the programme makers had misled Ms A and Mr B about the nature of the programme. As set out above, we did not agree with the complainants' characterisation of the programme as having a focus on the topic of parental alienation allegations by a non-resident father against a resident mother but instead considered this was one element of the wider subject-matter of the Programme. We therefore did not consider that there had been a significant change in the nature of the programme as described in the release forms so as to invalidate Ms A and Mr B's informed consent.

Unfairness in the programme

- ii) We then considered whether Ms A and Mr B had been treated unfairly in the programme as broadcast. In doing so, we had particular regard to the following Code Practices:

Practice 7.6, which states:

“When a programme is edited, contributions should be represented fairly”.

Practice 7.9, which states:

“Before broadcasting a factual programme...broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation...”.

It is important to understand from the outset that it is an editorial decision for the programme makers and broadcaster to make in selecting and editing material, including interview footage of a contributor, for inclusion in a programme. However, in editing such material, broadcasters must ensure that they do so in a manner that represents the contribution fairly.

Ms A and Mr B felt that “Their story and highly sensitive audio footage they contributed to the programme were misrepresented”. Ms A and Mr B alleged that their story and the audio recording were presented in a way that gave viewers the misleading impression that “Edward”, representing Mr B in the programme, when he was a child had been living with his mother, “Alex”, representing Ms A in the programme. Ms A and Mr B alleged that this misrepresentation had the intention of “...furthering the programme’s political narrative that ‘non-resident’ parents are using allegations of ‘parental alienation’ to cause family courts to forcibly remove children from resident parents and change the child’s residence to the other parent”. In the case of the complainants, the father was the resident parent who the complainants said used parental alienation to disrupt Mr B’s relationship with his non-resident mother, Ms A.

In considering this complaint, we also took into account the specific points Ms A gave as examples of how she was misrepresented as being the resident parent in the programme:

- Ms A said that: “They [i.e. Channel 4] only use[d] the part of the audio where you can hear [Mr B] screaming that he is going to kill himself if he is brought back to his father. They did not include the fact that I was arrested in front of my son during the raid. They spliced the audio to give the impression that I was the resident parent and [Mr B] was yet another child being forcibly removed due to false claims of parental alienation made by the father”.
- Ms A said that the programme introduced her and her son’s story as follows: “I’ve heard of another family who want to talk to me. Edward is now 24 and was forcibly removed from his mother to live with his father three times”. Ms A said that this “...further reinforced the impression that I was the resident parent accused of parental alienation and the father was attempting to gain more access through forced removals. The contrary was true; the ...✂ [REDACTED]²⁰ father in our case was the resident parent and was using forced removals as part of a pattern of parental alienation to disrupt [Mr B’s] already limited relationship with me”. Ms A said that: “As such, I believe they [i.e. Channel 4] exploited [Mr B’s] suicide attempt and [the] extreme distress heard in the...raid audio as a commercial hook to support the narrative that had no relation to our situation”.
- Ms A said that the excerpts of the interview between her and the reporter included in the programme suggested that she was crying on the train because of the multiple court proceedings she had had to attend. Ms A said that this was not the case, and that the programme had not included those parts of the interview where she explained that “...I was crying on the train after [Mr B] had been forcibly removed from...✂ [REDACTED]²¹...Again, by revealing the full details of this story it would have demonstrated that the father was the resident parent”.

We also took into account the following references which were made to the complainants during the programme:

When introducing the complainants’ story, the presenter said:

“Edward is now 24 and was forcibly removed from his mother to live with his father three times in his early teens”.

After the extract from the recording of Mr B’s forced removal was played, the presenter said: *“Edward was separated from his mother for 16 months”.*

After Mr B described the psychological impact of the enforced removal, the presenter stated:

“His mum went to court over 25 times fighting to get Edward back home with her, where he wanted to be”.

During the segment on Ms A and Mr B’s story there was no explicit reference made as to who the resident parent was, or which parent was accused of parental alienation. As set above, the Programme highlighted that Mr B had been separated from his mother as a result of a court

²⁰ This text has been redacted for legal reasons.

²¹ This text has been redacted for legal reasons.

order, but we did not consider that this would necessarily have led viewers to infer that Ms A was the resident parent.

We also took the view that while the case of another mother, Jane, and the enforced removal of her children featured in the programme, did involve allegations of parental alienation against the resident mother by an abusive father, this case history was clearly separated from that of the complainants. Following the story of Jane and her children, the programme examined: whether removal orders were well-founded; looking at the courts' reasons for making such orders and the frequency with which they do so; the quality of the evidence; and research to support the case for removal and the impact on the children affected. The segment about Ms A and Mr B's story came after a section of the programme focussing on the programme makers' survey results on the mental health impacts of family court proceedings on children, with the footage of Mr B's removal being introduced because "*they [Ms A and Mr B] want this to be played to show how removals like this can cause long term damage to children's mental health*".

For these reasons, we considered that the inclusion of Ms A and Mr B's story was used to demonstrate the emotional impact of enforced removals ordered by the courts. We did not consider that viewers were likely to have seen it as part of a narrative about parental alienation allegations by non-resident fathers against resident mothers.

Ofcom considered that despite being edited substantially, the extracts of Ms A and Mr B's interviews and of the forced removal audio recording included in the programme, were an accurate and fair reflection of what they had said in the unedited interview and audio and did not distort the meaning of what they had said and did not present their story in a way which was unfair.

Therefore, taking the above factors into account, and considering the programme as a whole, Ofcom considered that, in the particular circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Ms A and Mr B. While we recognised that Ms A and Mr B may have liked further information included in the programme to explain what had happened to them and their experience of the Family Court, it is an editorial decision as to what is or is not included in a programme, provided that the programme complies with the Code and does not cause unfairness. In this case, for the reasons outlined above, we did not consider that the programme as broadcast was unfair to the complainants.

Unwarranted infringement of Privacy

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression and the audience's right to receive ideas and information without undue interference. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 of the Code, which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

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In addition to this Rule, Section Eight (Privacy) of the Code contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

- b) We considered whether Ms A and Mr B had their privacy unwarrantably infringed in connection with the obtaining of the material included in the programme. In doing so, we had particular regard to Practice 8.5 which states:

“Any infringement of privacy in the making of a programme should be with the person’s and/or organisation’s consent or be otherwise warranted”.

Ofcom first considered the extent to which Ms A and Mr B had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme had been obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We took into account that the programme included an audio recording of Mr B being forcibly removed from the care of his mother when he was 14 years old²² and extracts from interviews with Ms A and Mr B. Although not all the material was included in the programme as broadcast, the topics covered in the interviews were: Ms A’s divorce from Mr B’s father and the ensuing custody battle over Mr B; < [REDACTED]²³; their experience of the Family Court and of “parental alienation” and of Mr B’s forced removal from the care of his mother; and, the child welfare system in the UK and Cafcass. We therefore considered that the material obtained included personal and sensitive information about the complainants’ private life, and that they had a legitimate expectation of privacy in relation to this information.

However, we also took into account that Ms A and Mr B had provided the programme makers with the audio recording for use in the programme and had willingly participated in the interviews for the programme with the knowledge that any information they disclosed may be included in the programme. As outlined above at head a), we considered that the programme makers had the complainants’ informed consent to obtain the material included in the programme.

Having reached the view that the complainants had consented to the obtaining of the material included in the programme, it was not necessary for Ofcom to consider whether any infringement of their privacy was warranted.

Given all the factors set out above, we considered that there was no unwarranted infringement of the complainants’ privacy in connection with the obtaining of material included in the programme.

²² Mr B was an adult when he was interviewed for the programme and when the programme was subsequently broadcast.

²³ This text has been redacted for legal reasons.

c) We next considered whether Ms A and Mr B had their privacy unwarrantably infringed in the programme as broadcast. In doing so, we had particular regard to Practice 8.6 which states:

“If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted”.

As above, at head b), Ofcom first considered the extent to which Ms A and Mr B had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme had been broadcast. Again, we took account of the complainants’ material included in the programme (as set out under head b) above).

We next considered whether the complainants were identifiable in the programme as broadcast. The programme makers took steps to anonymise the complainants, for example: the complainants were not named in the programme; actors were used to represent them in the programme; and the programme makers were careful in what details they included in the programme about the complainants’ story so that they could not be identified via jigsaw effect. ~~✕~~ [REDACTED]²⁴. Although, in these circumstances, we considered it unlikely that the ordinary viewer would identify either of the complainants, we considered that they may be identifiable to those who knew them well and were aware of the events depicted in the programme.

We next considered whether the programme makers had consent to include the private and sensitive information about the complainants in the programme as broadcast. As outlined above at head b), Ms A and Mr B had provided the programme makers with the audio recording for use in the programme and both Ms A and Mr B had willingly participated in the interviews for the programme with the knowledge that any information they disclosed may be included in the programme. As outlined above at head a), we also considered that the programme makers had the complainants’ informed consent to obtain and include the material in the programme as broadcast.

Having reached the view that the complainants had consented to the broadcast of the material included in the programme, it was not necessary for Ofcom to consider whether any infringement of their privacy was warranted.

Given all the factors set out above, we considered that there was no unwarranted infringement of the complainants’ privacy in the programme as broadcast.

Ofcom has not upheld Ms A and Mr B’s complaint of unjust or unfair treatment in the programme as broadcast or of unwarranted infringement of privacy in both the obtaining of and subsequent broadcast of the material included in the programme.

²⁴ This text has been redacted for legal reasons.
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